

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF RHODE ISLAND

MARK ZELL AND BETH ZELL,	:	
Individually and on behalf of K.Z., a minor	:	
	:	
vs.	:	C.A. No. 1:17-cv-00277-S-LDA
	:	
BARRY RICCI, ET ALS	:	

DEFENDANT, CHARIHO REGIONAL SCHOOL DISTRICT'S MOTION TO DISMISS
COUNT V OF PLAINTIFF'S SECOND AMENDED COMPLAINT

Now comes the defendant, Chariho Regional School District pursuant to F.R.C.P. 12(b)(1) and moves this Honorable Court for an order dismissing Count V of the plaintiff's Second Amended Complaint. As set forth herein dismissal is required based upon the court's Memorandum and Order dated March 30, 2018 (ECF 73) concerning the identical claim against defendant, Rhode Island Council and Elementary and Secondary Education (hereinafter "RI Council").

After the Chariho Defendants filed their motion to dismiss (ECF 27) plaintiffs filed a Second Amended Complaint. (ECF 41). The Second Amended Complaint added the Chariho Regional School District (hereinafter "Chariho") as a defendant with respect to Count V, the administrative appeal of the RI Council's decision. Chariho elected to file an answer to only Count V of the plaintiff's Second Amended Complaint (ECF 48) with the understanding that whether Count V was actually decided by the court would be dependant upon its decision on RI Council's motion to dismiss and/or plaintiffs' motion that the court exercise supplemental jurisdiction over Count V.

In its Memorandum and Order the court granted the RI Council's motion to dismiss and declined to exercise supplemental jurisdiction over Count V. Clearly, plaintiff's claims in Count V against Chariho are controlled by the court's decision. Therefore, the

defendant, Chariho Regional School District, respectfully requests an order dismissing Count V of the plaintiff's Second Amended Complaint against it.¹

CHARIHO REGIONAL SCHOOL DISTRICT,
By its attorney,

/s/Mark T. Reynolds

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CERTIFICATION

I hereby certify that on the 4th day of April 2018, this document was filed electronically and is available for viewing and downloading from the ECF System and a copy was served by electronic mail to the following counsel of record:

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/s/ Mark T. Reynolds

¹ Although the court's denial of plaintiff's motion for supplemental jurisdiction over Count V may be sufficient, Chariho felt it would be best to seek an order dismissing Count V as to Chariho because Count V was not a subject of Chariho's motion to dismiss.